

Archd Bowie

August 2. 1766.

*5th August
Lent upon
petition to
of extol of
what shall be
found due*

Unto the Right Honourable the Lords of Council and Session,

T H E

P E T I T I O N

O F

*Archibald Bowie Merchant in Edinburgh,**Humbly sheweth,*

THAT, in May 1763, the petitioner brought a process of reduction, spuilzie, oppression, and damages, against Edward Caithness merchant in Edinburgh, James Hotchkiss brewer there, and Archibald Hamilton merchant there, for himself and company, with whom the petitioner had been in a company-concern for carrying on a linen-manufacture, and for whom he had acted as clerk, cashier, and manager, as also against James Stormonth writer in Edinburgh, and William Gulline messenger there, calling for production of two bills granted by the petitioner to the defenders, Caithness and Hotchkiss, and concluding for damages and expences, all of them on account of their having carried off from him goods and effects to a very great extent, partly in virtue of a pretended poinding, and partly without any order of law whatever; by which the petitioner's credit was ruined, and he obliged to stop payment; and that at a time when the defenders, so far from being creditors, were, on the contrary, debtors to the petitioner in a balance of L. 723. 6. 7 $\frac{1}{2}$ Sterling.

That

That, in this process, a proof was allowed, a state prepared, and memorials given in; but, by this time, mutual processes of compt and reckoning having been commenced, and some progress made in them, before Lord Edgefield Ordinary, it occurred to your Lordships, that it was proper to delay advising the state, till the accomptant, to whom the process of compt and reckoning had been remitted, should give in his report, and the cause was therefore put off till parties should apply.

The defenders, in their compt and reckoning against the petitioner, concluded for £ 1000 Sterling, and raised inhibition upon the dependence. The petitioner concluded in his process for about £ 773.

That the defenders, besides pouding upon the bills above mentioned, have locked up all the pursuer's funds, heritable and moveable, by inhibiting him, and using arrestments in the hands of all the different persons who were owing the petitioner money, or had goods of his in their possession.

Dec. 17. That Lord Edgefield, in the mutual processes of compt
1763. and reckoning, remitted the accompt-books, letter-books, letters, and copies of letters, to John Hay accomptant, proposed by the defenders, and agreed to by the petitioner, in order to inspect the same, and report his opinion.

That after this, Mr Hay had several meetings with the parties, and their doers; and he not having then time to go through such voluminous accompts himself, the defenders proposed that Alexander Wemyss should examine the books and accompts, and ingross his remarks and observes in a book. This having been also agreed to by the petitioner, Mr Hay made an order, remitting, of consent of parties, to the said Alexander Wemyss to examine the books, and ingross his remarks and observes in a book.

That Mr Wemyss accordingly fell to work, and after six months constant and diligent labour, made up a distinct
state

state and report ; from which, page 38. it appears, that the defenders are debtors to the petitioner in a balance of £ 747. 17. 2 $\frac{1}{2}$ Sterling.

That upon this the petitioner gave in a note to the Court, in order that consideration of the prepared state of his process might be resumed ; but this was opposed by the defenders. who pretended that they would be able to shew that Mr Wemyss's report was erroneous.

Objections having been made by the defenders to Mr Wemyss's report, and answers for the petitioner, the Lord Pitfour Ordinary, to whom the cause had been remitted in place of Lord Edgefield, ordained Mr Hay to consider Mr Wemyss's report, objections, answers, and replies, and to report upon the whole.

That Mr Hay accordingly has considered Mr Wemyss's report, with the objections, answers, and replies, and given his opinion most distinctly on every disputed article. From this report it appears, that Mr Hay differs from Mr Wemyss only in some few very trifling articles, amounting in all to about £ 5 Sterling, which variation is occasioned by Mr Hay's taking from and adding to the petitioner's credit some articles in a different manner from what Mr Wemyss did ; and the above balance struck by Mr Wemyss and Mr Hay is exclusive of the value of the goods poulded, which amounts to £ 330 Sterling, even by the defenders own executions of poulding, and the value of the goods carried off by them without any warrant at all, which amounts to £ 70.

So standing the fact, the petitioner is persuaded your Lordships will think it very unreasonable that the defenders should keep under embargo the petitioners whole funds, so that he can have no access to any part of his money or goods for carrying on business, maintaining his family, and doing justice to his creditors ; and therefore hopes he will be forgiven for this application, in order to have

have the nimious and oppressive diligence against him removed. The petitioner will be at no loss to find undoubted caution, if that shall be thought necessary, as several merchants of character and credit are sensible of the ill-usage he has met with, and willing to do him a service: But it is imagined your Lordships will not think caution at all necessary; for the arrestments were used upon two bills granted by the petitioner, one for £ 300 Sterling, and the other for £ 191, which are more than paid by the goods poynded and spuillized from the petitioner; and though that were not the case, yet as, by two consecutive reports by two different accomptants, a great balance, far exceeding the amount of the two bills, is found to be due by the defenders to the petitioner, it is humbly thought that circumstance, of itself, affords good reason for granting the petitioner's request.

May it therefore please your Lordships, to recal the inhibition, and loose the arrestments above mentioned, either upon or without the petitioner's finding caution, as your Lordships shall think proper.

According to justice, &c.

JO. MACLAURIN.

Edinburgh, August 2. 1766. Betwixt the hours of ten and twelve before noon, I John Flockhart writer in Edinburgh, doer for the petitioner, did intimate to Mr Andrew Crosbie one of the counsel for the defenders, That copies of this petition were to be put into the Lords boxes this forenoon, in order to be moved on Tuesday next. This I did, by delivering a printed copy of this petition, with a note of intimation subjoined thereto; to the said Mr Andrew Crosbie personally before these witnesses, John Stewart and John Flockhart junior, writers in Edinburgh.

JO. FLOCKHART.

